

**Testimony Before the
Subcommittee on Information Policy, Census, and National Archives,
House Committee on Oversight and Government Reform**

**Presented by Steven L. Hensen, Past President
Society of American Archivists
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The Society of American Archivists (SAA) is the world's largest organization of professional archivists, representing 4,800 members across the United States and in more than 20 nations. Archivists are the professionals who, among other things, are entrusted by society to ensure access to the records of the people's government at all levels; to ensure the authenticity and integrity of those records; and to preserve and make accessible a credible and reasonably complete historical account of government and other aspects of society.

In accordance with these archival principles and the ethical consequences stemming from them, SAA has spoken out frequently when public officials sought to delay or deny public access to their records.

Thus it is not surprising that we would react when the records in question are those of the highest elected public office in the country—that of the President of the United States. In the wake of the 9-11 terrorist attack on the United States, President Bush issued Executive Order 13233, claiming national security concerns, among others. The national reaction to the order was swift and emphatic. A number of newspapers, magazines, and journals editorialized against it; organizations, historians, archivists, librarians, and civic activists from across the political spectrum issued statements denouncing the order; and lawsuits were filed. The House Committee on Government Reform, with broad bi-partisan sponsorship, approved legislation directed at overturning the order.

That effort was unsuccessful and the issues surrounding the Executive Order remain problematic. Recent proposals regarding the George W. Bush Presidential Library have brought these problems into even sharper relief and have once again raised public consciousness.

On behalf of the nation's archivists, I ask your consideration in overturning this six-year-old Executive Order that has seriously compromised the basic principles of government accountability which are underpinned by the people's right of access to the records of their government. In the case of the records of the office of the President of the United States, it is a right that took a long time for the nation to claim fully, but just a quick stroke of the pen to destroy.

The Presidential Records Act of 1978 (44 U.S.C. 2201-2207) came out of the ordeal of Watergate. This law addressed, among other matters, legitimate Congressional fears that former President Nixon would destroy or otherwise never allow public access to the records of his administration. Instead, the Act established the principle that presidential papers represent the

official records of activity by the executive office in our government of, by, and for the people and are the property of those people through their government. The Act supports the principle that public records are not simply a collection of historical curiosities or even the record of a personal legacy. They are instead the official evidence of government activities and the very foundation for accountable government and the rule of law. As such, they must not be subject to anything other than objective professional archival oversight. A break in the legal chain of custody or private tampering with the records can destroy inherent evidential values and affect the accuracy of future historical research. Accordingly, the Act further mandates that the Archivist of the United States be responsible for the management, custody, and access to such records on behalf of the nation as a whole.

In November 2001, President Bush signed Executive Order 13233, framed as a “further implementation” of the Presidential Records Act. In fact, however, the Order abrogates the core principles of the Act and violates both its spirit and letter. Where the PRA provides for the orderly and archivally sound management of presidential records, with the final authority residing appropriately with the Archivist of the United States, the President’s order places ultimate responsibility for decisions regarding access with the President, and indeed with *any* sitting President into the future. In fact, the Executive Order gives every ex-President this power over the government records of their administrations and the records of other administrations and extends it even further—to the family members and (by implication) heirs and representatives of ex-Presidents, without apparent limit. The Order provides that the people can be denied access for any reason, or no reason, and for any period, even perpetually.

Although this unwarranted extension of presidential power and privilege to presidential family members and representatives is one of the more troubling aspects of the Executive Order, even more ominous is the violence that it does to fundamental principles of democratic access and accountability.

As noted above, archivists have a primary commitment to maintain the integrity of records, both contemporaneous and historical. We believe that access to the records of public officials is essential to the accountability and rule of law that distinguishes democracies from other forms of governance. This is as true for the county clerk as it is for the President of the United States. The existing Executive Order thoroughly undermines that accountability at its highest and most essential level.

As discussions about placement of the George W. Bush Presidential Library continue, it is time once again—and more urgently—to raise our concerns about the people’s access to presidential records. There is no assurance that this library will fully and accurately reflect the record of the Bush Administration. Should the taxpayers pay to run a presidential library that is, in effect, an empty shell? There may be papers inside, but if those papers are embargoed indefinitely by Mr. Bush or members of his family, what are those papers but mockeries of public accountability? Should citizens pay to assist in undermining both the study of history and the exercise of citizens’ rights?

The answer to these questions, we hope, is “no.”

The ultimate responsibility lies with Congress. The House and Senate should reassert their authority, on behalf of all American citizens, to ensure that ownership and control of the records of the Bush presidency—and all presidencies—are in the hands of the National Archives in trust for the people, and not in the hands of former Presidents and their families. Reassertion of this authority would ensure that all Presidents, past and future, remain accountable.

Presidential papers are not the President's papers, but rather the records of the people's presidency. The Society of American Archivists hopes that Congress will recognize this important principle and take action to overturn Executive Order 13233.

Respectfully submitted,

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